

113TH CONGRESS  
1ST SESSION

# H. R. 1982

To amend section 1862 of the Social Security Act with respect to the application of Medicare secondary payer rules to workers' compensation settlement agreements and Medicare set-asides under such agreements.

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## IN THE HOUSE OF REPRESENTATIVES

MAY 15, 2013

Mr. REICHERT (for himself and Mr. THOMPSON of California) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To amend section 1862 of the Social Security Act with respect to the application of Medicare secondary payer rules to workers' compensation settlement agreements and Medicare set-asides under such agreements.

1       *Be it enacted by the Senate and House of Representa-  
2 tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the "Medicare Secondary  
5 Payer and Workers' Compensation Settlement Agree-  
6 ments Act of 2013".

1   **SEC. 2. APPLICATION OF MEDICARE SECONDARY PAYER**  
2                 **RULES TO CERTAIN WORKERS' COMPENSA-**  
3                 **TION SETTLEMENT AGREEMENTS AND**  
4                 **QUALIFIED MEDICARE SET-ASIDE PROVI-**  
5                 **SIONS.**

6         (a) **THRESHOLD FOR SECONDARY PAYER PROVI-**  
7         **SIONS FOR CERTAIN WORKERS' COMPENSATION SETTLE-**  
8         **MENT AGREEMENTS.**—Section 1862 of the Social Security  
9         Act (42 U.S.C. 1395y) is amended—

10                 (1) in subsection (b)(2)(A)(ii), by inserting  
11                 “subject to subsection (p),” after “(ii);” and  
12                 (2) by adding at the end the following new sub-  
13                 section:

14                 “(p) **THRESHOLD FOR SECONDARY PAYER PROVI-**  
15         **SIONS FOR CERTAIN WORKERS' COMPENSATION SETTLE-**  
16         **MENT AGREEMENTS.**—

17                 “(1) **IN GENERAL.**—A workers' compensation  
18         law or plan shall not be treated as a primary plan  
19         for purposes of subsection (b) with respect to a  
20         workers' compensation settlement agreement if the  
21         agreement (or claimant under the agreement) meets  
22         any of the following requirements:

23                 “(A) **TOTAL SETTLEMENT AMOUNT NOT**  
24         **EXCEEDING \$25,000.**—Such agreement has a  
25         total settlement amount (as determined under  
26         paragraph (2)) that does not exceed \$25,000 or

1           such greater amount as the Secretary may  
2           specify in regulations.

3           “(B) LIKELY INELIGIBILITY OF WORKERS’  
4           COMPENSATION CLAIMANT FOR MEDICARE BEN-  
5           EFITS.—The claimant subject to such agree-  
6           ment—

7                 “(i) is not eligible for benefits under  
8                 this title as of the effective date of the  
9                 agreement; and

10                “(ii) is unlikely to become so eligible,  
11                as determined under paragraph (3), within  
12                30 months after such effective date.

13                “(C) NO FUTURE WORKERS’ COMPENSA-  
14                TION MEDICAL EXPENSES.—The claimant sub-  
15                ject to such agreement is not eligible for pay-  
16                ment of medical expenses incurred after the ef-  
17                fective date of the agreement from the workers’  
18                compensation law or plan of the jurisdiction in  
19                which such agreement will be effective.

20                “(D) NO LIMITATION ON FUTURE WORK-  
21                ERS’ COMPENSATION MEDICAL EXPENSES.—  
22                Such agreement does not limit or extinguish the  
23                right of the claimant to payment of medical ex-  
24                penses incurred after the effective date of such  
25                agreement by the workers’ compensation law or

1           plan of the jurisdiction in which the agreement  
2           will be effective.

3           “(2) DETERMINATION OF TOTAL SETTLEMENT  
4           AMOUNT OF WORKERS’ COMPENSATION SETTLE-  
5           MENT AGREEMENT.—For purposes of paragraph  
6           (1)(A) and subsection (q) and with respect to a  
7           work-related injury or illness that is the subject of  
8           a workers’ compensation settlement agreement, the  
9           total settlement amount of the agreement is the sum  
10          of monetary wage replacement benefits, attorney  
11          fees, all future medical expenses, repayment of Medi-  
12          care conditional payments, payout totals for annu-  
13          ties to fund the expenses listed above, and any pre-  
14          viously settled portion of the workers’ compensation  
15          claim.

16          “(3) DETERMINATION OF LIKELY INELIGI-  
17          BILITY OF CLAIMANT FOR MEDICARE BENEFITS.—  
18          For purposes of paragraph (1)(B)(ii), a workers’  
19          compensation claimant shall be deemed unlikely to  
20          become eligible for benefits under this title within 30  
21          months after the effective date of the agreement unless,  
22          as of the effective date of the agreement, such  
23          claimant is insured for disability insurance benefits  
24          under section 223(c)(1) and is described in any of  
25          the following subparagraphs:

1                 “(A) AWARDED DISABILITY BENEFITS.—

2                 The individual has been awarded such disability  
3                 insurance benefits.

4                 “(B) APPLIED FOR DISABILITY.—The individ-  
5                 ual has applied for such disability insurance  
6                 benefits.

7                 “(C) ANTICIPATES APPEAL.—The individ-  
8                 ual has been denied such disability insurance  
9                 benefits but anticipates appealing that decision.

10                 “(D) APPEALING OR REFILING.—The individ-  
11                 ual is in the process of appealing or refiling  
12                 for such disability insurance benefits.

13                 “(E) MINIMUM AGE.—The individual is at  
14                 least 62 years and 6 months of age.

15                 “(F) END-STAGE RENAL DISEASE.—The  
16                 individual is medically determined to have end-  
17                 stage renal disease but does not yet qualify for  
18                 health benefits under section 226A based on  
19                 such disease.

20                 “(4) DEFINITIONS.—For purposes of this sub-  
21                 section and subsection (q):

22                 “(A) COMPROMISE AGREEMENT.—The  
23                 term ‘compromise agreement’ means a workers’  
24                 compensation settlement agreement that—

1                     “(i) applies to a workers’ compensa-  
2                     tion claim that is denied or contested, in  
3                     whole or in part, by a workers’ compensa-  
4                     tion payer involved under the workers’  
5                     compensation law or plan applicable to the  
6                     jurisdiction in which the agreement has  
7                     been settled; and

8                     “(ii) does not provide for a payment  
9                     of the full amount of benefits sought or  
10                     that may be payable under the workers’  
11                     compensation claim.

12                     “(B) COMMUTATION AGREEMENT.—The  
13                     term ‘commutation agreement’ means a work-  
14                     ers’ compensation settlement agreement to set-  
15                     tle all or a portion of a workers’ compensation  
16                     claim, in which—

17                     “(i) liability for past and future bene-  
18                     fits is not disputed; and

19                     “(ii) the parties to the agreement  
20                     agree to include payment for future work-  
21                     ers’ compensation benefits payable after  
22                     the date on which the agreement becomes  
23                     effective.

1                 “(C) WORKERS’ COMPENSATION CLAIM-  
2                 ANT.—The term ‘workers’ compensation claim-  
3                 ant’ means a worker who—

4                         “(i) is or may be covered under a  
5                 workers’ compensation law or plan; and

6                         “(ii) submits a claim or accepts bene-  
7                 fits under such law or plan for a work-re-  
8                 lated injury or illness.

9                 “(D) WORKERS’ COMPENSATION LAW OR  
10                 PLAN.—

11                         “(i) IN GENERAL.—The term ‘work-  
12                 ers’ compensation law or plan’ means a  
13                 law or program administered by a State or  
14                 the United States to provide compensation  
15                 to workers for a work-related injury or ill-  
16                 ness (or for disability or death caused by  
17                 such an injury or illness), including the  
18                 Longshore and Harbor Workers’ Com-  
19                 pensation Act (33 U.S.C. 901–944, 948–  
20                 950), chapter 81 of title 5, United States  
21                 Code (known as the Federal Employees  
22                 Compensation Act), the Black Lung Bene-  
23                 fits Act (30 U.S.C. 931 et seq.), and part  
24                 C of title 4 of the Federal Coal Mine and  
25                 Safety Act (30 U.S.C. 901 et seq.), but not

“(ii) INCLUSION OF SIMILAR COM-  
PENSATION PLAN.—Such term includes a  
similar compensation plan established by  
an employer that is funded by such em-  
ployer or the insurance carrier of such em-  
ployer to provide compensation to a worker  
of such employer for a work-related injury  
or illness.

12                             “(E) WORKERS’ COMPENSATION PAYER.—

13                             The term ‘workers’ compensation payer’ means,

14                             with respect to a workers’ compensation law or

15                             plan, a workers’ compensation insurer, self-in-

16                             surer, employer, individual, or any other entity

17                             that is or may be liable for the payment of ben-

18                             efits to a workers’ compensation claimant pur-

19                             suant to the workers’ compensation law or plan.

20                             “(F) WORKERS’ COMPENSATION SETTLE-  
21                             MENT AGREEMENT.—The term ‘workers’ com-  
22                             pensation settlement agreement’ means an  
23                             agreement, which includes a commutation  
24                             agreement or compromise agreement, or any  
25                             combination of both, between a claimant and

1           one or more workers' compensation payers  
2           which—

3                 “(i) forecloses the possibility of future  
4                 payment of some or all workers' compensa-  
5                 tion benefits involved; and

6                 “(ii)(I) compensates the claimant for  
7                 a work-related injury or illness as provided  
8                 for by a workers' compensation law or  
9                 plan; or

10                 “(II) eliminates cause for litigation in-  
11                 volving issues in dispute between the  
12                 claimant and payer.”.

13                 (b) SATISFACTION OF SECONDARY PAYER REQUI-

14                 REQUIREMENTS THROUGH USE OF QUALIFIED MEDICARE SET-

15                 ASIDES UNDER WORKERS' COMPENSATION SETTLEMENT

16                 AGREEMENTS.—Section 1862 of the Social Security Act

17                 (42 U.S.C. 1395y), as amended by subsection (a), is fur-  
18                 ther amended by adding at the end the following new sub-  
19                 section:

20                 “(q) TREATMENT OF QUALIFIED MEDICARE SET-

21                 ASIDES UNDER WORKERS' COMPENSATION SETTLEMENT

22                 AGREEMENTS.—

23                 “(1) SATISFACTION OF SECONDARY PAYER RE-

24                 QUIREMENTS THROUGH USE OF QUALIFIED MEDI-

25                 CARE SET-ASIDES.—

1                   “(A) FULL SATISFACTION OF CLAIM OBLI-  
2                   GATIONS.—

3                   “(i) IN GENERAL.—If a workers’ com-  
4                   pensation settlement agreement, related to  
5                   a claim of a workers’ compensation claim-  
6                   ant, includes a qualified Medicare set-aside  
7                   (as defined in paragraph (2)), such set-  
8                   aside shall satisfy any obligation with re-  
9                   spect to the present or future payment re-  
10                  imbursement under subsection (b)(2) with  
11                  respect to such claim. The Secretary shall  
12                  have no further recourse, directly or indi-  
13                  rectly, under this title with respect to such  
14                  agreement.

15                  “(ii) RULE OF CONSTRUCTION.—  
16                  Nothing in this section shall be construed  
17                  as requiring the submission of a Medicare  
18                  set-aside to the Secretary.

19                  “(B) MEDICARE SET-ASIDE AND MEDI-  
20                  CARE SET-ASIDE AMOUNT DEFINED.—For pur-  
21                  poses of this subsection:

22                  “(i) MEDICARE SET-ASIDE.—The  
23                  term ‘Medicare set-aside’ means, with re-  
24                  spect to a workers’ compensation settle-  
25                  ment agreement, a provision in the agree-

1                   ment that provides for a payment of a  
2                   lump sum, annuity, a combination of a  
3                   lump sum and an annuity, or other  
4                   amount that is in full satisfaction of the  
5                   obligation described in subparagraph (A)  
6                   for items and services that the workers'  
7                   compensation claimant under the agree-  
8                   ment received or is likely to receive under  
9                   the applicable workers' compensation law  
10                  and for which payment would be made  
11                  under this title, but for subsection  
12                  (b)(2)(A).

13                   “(ii) MEDICARE SET-ASIDE  
14                   AMOUNT.—The term ‘Medicare set-aside  
15                  amount’ means, with respect to a Medicare  
16                  set-aside, the actual dollar amount pro-  
17                  vided for in clause (i).

18                   “(2) QUALIFIED MEDICARE SET-ASIDE.—

19                   “(A) REQUIREMENTS OF QUALIFIED MEDI-  
20                  CARE SET-ASIDE.—For purposes of this sub-  
21                  section, the term ‘qualified Medicare set-aside’  
22                  is a Medicare set-aside in which the Medicare  
23                  set-aside amount reasonably takes into account  
24                  the full payment obligation described in para-  
25                  graph (1)(A), while meeting the requirements of

1           subparagraphs (B) and (C) and giving due con-  
2           sideration to the following:

3                 “(i) The illness or injury giving rise to  
4                 the workers’ compensation claim involved.

5                 “(ii) The age and life expectancy of  
6                 the claimant involved.

7                 “(iii) The reasonableness of and ne-  
8                 cessity for future medical expenses for  
9                 treatment of the illness or injury involved.

10                 “(iv) The duration of and limitation  
11                 on benefits payable under the workers’  
12                 compensation law or plan involved.

13                 “(v) The regulations and case law rel-  
14                 evant to the State workers’ compensation  
15                 law or plan involved.

16                 “(B) ITEMS AND SERVICES INCLUDED.—A  
17                 qualified Medicare set-aside—

18                 “(i) shall include payment for items  
19                 and services that are covered and otherwise  
20                 payable under this title as of the effective  
21                 date of the workers’ compensation settle-  
22                 ment agreement and that are covered by  
23                 the workers’ compensation law or plan;  
24                 and

1                 “(ii) is not required to provide for  
2 payment for items and services that are  
3 not described in clause (i).

4                 “(C) PAYMENT REQUIREMENTS.—

5                 “(i) REQUIRED USE OF WORKERS'  
6 COMPENSATION FEE SCHEDULE.—

7                 “(I) IN GENERAL.—Except in the  
8 case of an optional direct payment of  
9 a Medicare set-aside made under  
10 paragraph (5)(A), the set-aside  
11 amount shall be based upon the pay-  
12 ment amount for items and services  
13 under the workers' compensation fee  
14 schedule (effective as of the date of  
15 the agreement) applicable to the work-  
16 ers' compensation law or plan in-  
17 volved.

18                 “(II) WORKERS' COMPENSATION  
19 FEE SCHEDULE DEFINED.—For pur-  
20 poses of this subsection, the term  
21 ‘workers' compensation fee schedule’  
22 means, with respect to a workers'  
23 compensation law or plan of a State  
24 or a similar plan applicable in a State,  
25 the schedule of payment amounts the

1                   State has established to pay providers  
2                   for items and services furnished to  
3                   workers who incur a work-related in-  
4                   jury or illness as defined under such  
5                   law or plan (or in the absence of such  
6                   a schedule, the applicable medical re-  
7                   imbursement rate under such law or  
8                   plan).

9                   “(ii) OPTIONAL PROPORTIONAL AD-  
10                  JUSTMENT FOR COMPROMISE SETTLEMENT  
11                  AGREEMENTS.—

12                  “(I) IN GENERAL.—In the case  
13                  of a compromise settlement agree-  
14                  ment, a claimant or workers’ com-  
15                  pensation payer who is party to the  
16                  agreement may elect to calculate the  
17                  Medicare set-aside amount of the  
18                  agreement by applying a percentage  
19                  reduction to the Medicare set-aside  
20                  amount for the total settlement  
21                  amount that could have been payable  
22                  under the applicable workers’ com-  
23                  pensation law or similar plan involved  
24                  had the denied or contested portion of  
25                  the claim not been subject to a com-

1 promise agreement. The percentage  
2 reduction shall be equal to the denied  
3 or contested percentage of such total  
4 settlement. Such election may be  
5 made by a party to the agreement  
6 only with the written consent of the  
7 other party to the agreement.

8 “(II) APPLICATION.—If the  
9 claimant or workers’ compensation  
10 payer elects to calculate the Medicare  
11 set-aside amount under this clause,  
12 the Medicare set-aside shall be  
13 deemed a qualified Medicare set-aside.

14 “(D) CERTAIN MEDICARE SET-ASIDES  
15 WITH SAFE HARBOR AMOUNT DEEMED QUALI-  
16 FIED MEDICARE SET-ASIDES.—

17 “(i) IN GENERAL.—For purposes of  
18 this section and subject to clause (iv), a  
19 Medicare set-aside of a workers’ compensa-  
20 tion settlement agreement shall be deemed  
21 a qualified Medicare set-aside if the Medi-  
22 care set-aside amount involved is the safe  
23 harbor amount for the agreement and the  
24 agreement does not exceed \$250,000.

1                     “(ii) WRITTEN CONSENT.—A safe  
2 harbor amount, with respect to a workers’  
3 compensation agreement, shall be treated  
4 as the Medicare set-aside amount for such  
5 agreement for purposes of clause (i) only  
6 upon written consent of all parties to the  
7 agreement.

8                     “(iii) SAFE HARBOR AMOUNT DE-  
9 FINED.—For purposes of this subsection,  
10 the term ‘safe harbor amount’ means, with  
11 respect to a workers’ compensation settle-  
12 ment agreement, 15 percent of the total  
13 settlement amount of the agreement (as  
14 determined under subsection (p)(2)), ex-  
15 cluding repayment of conditional payments  
16 and previously settled portions of the claim  
17 involved. In applying the previous sentence  
18 for purposes of determining the safe har-  
19 bor amount, with respect to a workers’  
20 compensation agreement, if the agreement  
21 includes an annuity, the cost (but not the  
22 payout of the annuity) shall be included in  
23 determining the total settlement amount of  
24 the agreement.

1                         “(iv) MANDATORY DIRECT PAYMENT  
2                         OF SAFE HARBOR AMOUNT.—A Medicare  
3                         set-aside of a worker’s compensation settle-  
4                         ment agreement described in this para-  
5                         graph may not be treated as a qualified  
6                         set-aside under clause (i) unless an election  
7                         is made under paragraph (5)(A) to trans-  
8                         fer to the Secretary a direct payment of  
9                         such set-aside.

10                         “(E) SECRETARIAL AUTHORITY WITH RE-  
11                         SPECT TO DEEMED QUALIFIED MEDICARE SET-  
12                         ASIDES WITH SAFE HARBOR AMOUNT.—

13                         “(i) DETERMINATION.—If the Sec-  
14                         retary determines, based on the data de-  
15                         scribed in clause (ii), that the provisions of  
16                         subparagraph (D) have caused a signifi-  
17                         cant negative financial impact (as specified  
18                         by the Chief Actuary of the Centers for  
19                         Medicare & Medicaid Services) on the Fed-  
20                         eral Hospital Insurance Trust Fund under  
21                         section 1817 or the Federal Supplementary  
22                         Medical Insurance Trust Fund under sec-  
23                         tion 1841, then the Secretary shall adopt  
24                         rules to reduce such impact by modifying

1           the amount of the percent described in  
2           subparagraph (D)(iii).

3           “(ii) REQUIRED DATA.—The deter-  
4           mination under clause (i) shall be based on  
5           data on—

6           “(I) the projected effect of the  
7           provisions described in such para-  
8           graph on the Federal Hospital Insur-  
9           ance Trust Fund under section 1817  
10          or the Federal Supplementary Medical  
11          Insurance Trust Fund under section  
12          1841 during the three-year period be-  
13          ginning on the date of the enactment  
14          of this subsection; as compared to

15          “(II) data on the effect on such  
16          trust funds of the provisions of sub-  
17          section (b), as in effect during the  
18          three-year period prior to such date of  
19          enactment.

20          “(3) PROCESS FOR APPROVAL OF QUALIFIED  
21          MEDICARE SET-ASIDES.—

22          “(A) OPTIONAL PRIOR APPROVAL BY SEC-  
23          RETARY.—A party to a workers’ compensation  
24          settlement agreement that includes a Medicare  
25          set-aside may submit to the Secretary the Medi-

1           care set-aside amount for approval of the set-  
2           aside as a qualified Medicare set-aside. The set-  
3           aside shall be submitted in accordance with a  
4           procedure specified by the Secretary.

5           “(B) NOTICE OF DETERMINATION OF AP-  
6           PROVAL OR DISAPPROVAL.—Not later than 60  
7           days after the date on which the Secretary re-  
8           ceives a submission under subparagraph (A),  
9           the Secretary shall notify in writing the parties  
10          to the workers’ compensation settlement agree-  
11          ment of the determination of approval or dis-  
12          approval. If the determination disapproves such  
13          submission the Secretary shall include with  
14          such notification the specific reasons for the  
15          disapproval. A determination that disapproves a  
16          submission is not valid if the determination  
17          does not include a specific explanation of each  
18          deficiency of the submission.

19           “(4) APPEALS.—

20           “(A) IN GENERAL.—A party to a workers’  
21          compensation settlement agreement that is dis-  
22          satisfied with a determination under paragraph  
23          (3)(B), upon filing a request for reconsideration  
24          with the Secretary not later than 60 days after

1           the date of notice of such determination, shall  
2           be entitled to—

3                 “(i) reconsideration of the determina-  
4                 tion by the Secretary (with respect to such  
5                 determination);

6                 “(ii) a hearing before an administra-  
7                 tive judge thereon after such reconsider-  
8                 ation; and

9                 “(iii) judicial review of the Secretary’s  
10                 final determination after such hearing.

11                 “(B) DEADLINES FOR DECISIONS.—

12                 “(i) RECONSIDERATIONS.—

13                     “(I) IN GENERAL.—The Sec-  
14                 retary shall conduct and conclude a  
15                 reconsideration of a determination  
16                 under subparagraph (A)(i) and mail  
17                 the notice of the decision of such re-  
18                 consideration to the party involved by  
19                 not later than the last day of the 30-  
20                 day period beginning on the date that  
21                 a request for such reconsideration has  
22                 been timely filed.

23                     “(II) APPEALS OF RECONSIDER-  
24                 ATIONS.—If a party to the workers’  
25                 compensation settlement involved is

1                   dissatisfied with the Secretary's deci-  
2                   sion under subclause (I) that party  
3                   may file an appeal within the 30-day  
4                   period after the date of receipt of the  
5                   notice of the decision under such sub-  
6                   clause and request a hearing before  
7                   an administrative law judge.

8                   “(III) FAILURE BY SECRETARY  
9                   TO PROVIDE NOTICE.—In the case of  
10                  a failure by the Secretary to mail the  
11                  notice of the decision under subclause  
12                  (I) by the last day of the period de-  
13                  scribed in such subclause, the Sec-  
14                  retary shall be deemed to have ap-  
15                  proved the submission as submitted  
16                  under paragraph (3)(A).

17                  “(ii) HEARINGS.—

18                  “(I) IN GENERAL.—An adminis-  
19                  trative law judge shall conduct and  
20                  conclude a hearing on a decision of  
21                  the Secretary under clause (i) and  
22                  render a decision on such hearing by  
23                  not later than the last day of the 90-  
24                  day period beginning on the date that

1                   a request for such hearing has been  
2                   timely filed.

3                   “(II) JUDICIAL REVIEW.—A deci-  
4                   sion under subclause (I) by an admin-  
5                   istrative law judge constitutes a final  
6                   agency action and is subject to judi-  
7                   cial review.

8                   “(III) FAILURE BY ADMINISTRA-  
9                   TIVE LAW JUDGE TO RENDER TIMELY  
10                  DECISION.—In the case of a failure by  
11                  an administrative law judge to render  
12                  a decision under subclause (I) by the  
13                  last day of the period described in  
14                  such subclause, the party requesting  
15                  the hearing may seek judicial review  
16                  of the decision under clause (i), not-  
17                  withstanding any requirements for a  
18                  hearing for purposes of the party’s  
19                  right to such judicial review.

20                  “(5) ADMINISTRATION OF MEDICARE SET-ASIDE  
21                  PROVISIONS; PROTECTION FROM CERTAIN LIABIL-  
22                  ITY.—

23                  “(A) OPTIONAL DIRECT PAYMENT OF  
24                  MEDICARE SET-ASIDE AMOUNT.—

1                         “(i) ELECTION FOR DIRECT PAYMENT  
2                         OF MEDICARE SET-ASIDE.—With respect to  
3                         a claim for which a workers' compensation  
4                         settlement agreement is established, a  
5                         claimant or workers' compensation payer  
6                         who is party to the agreement may elect,  
7                         but is not required, to transfer to the Sec-  
8                         retary a direct payment of the qualified  
9                         Medicare set-aside. With respect to a qual-  
10                         fied Medicare set-aside paid directly to the  
11                         Secretary, the parties involved may cal-  
12                         culate the Medicare set-aside amount of  
13                         such set-aside using any of the following  
14                         methods:

15                         “(I) In the case of any Medicare  
16                         set-aside of a compromise settlement  
17                         agreement under paragraph (2)(C)(ii),  
18                         the amount calculated in accordance  
19                         with such paragraph.

20                         “(II) In the case of any Medicare  
21                         set-aside, the amount based upon the  
22                         payment amount for items and serv-  
23                         ices under the workers' compensation  
24                         fee schedule (effective as of the date  
25                         of the agreement) applicable to the

1                   workers' compensation law or plan in-  
2                   volved, in accordance with paragraph  
3                   (2)(C)(i)(I).

4                   “(III) In the case of any Medi-  
5                   care set-aside, the payment amount  
6                   applicable to the items and services  
7                   under this title as in effect on the ef-  
8                   fective date of the agreement.

9                   Such transfer shall be in accordance with  
10                  a procedure established by the Secretary  
11                  and shall be made only upon written con-  
12                  sent of the other party to the agreement.

13                  “(ii) ELECTION SATISFYING LIABILITY.—An election made under clause (i),  
14                  with respect to a qualified Medicare set-  
15                  aside shall satisfy any payment, in relation  
16                  to the underlying claim of the related  
17                  workers' compensation settlement agree-  
18                  ment, required under subsection (b)(2) to  
19                  be made by the claimant or payer to the  
20                  Secretary. The Secretary shall have no fur-  
21                  ther recourse, directly or indirectly, under  
22                  this title with respect to such agreement.

23                  “(B) PROTECTION FROM CERTAIN LIABILITY.—

1                         “(i) LIABILITY FOR MEDICARE SET-  
2                         ASIDE PAYMENT GREATER THAN PAYMENT  
3                         UNDER WORKERS’ COMPENSATION LAW.—  
4                         No workers’ compensation claimant, work-  
5                         ers’ compensation payer, employer, admin-  
6                         istrator of the Medicare set-aside, legal  
7                         representative of the claimant, payer, em-  
8                         ployer, or administrator, or any other  
9                         party related to the claimant, payer, em-  
10                         ployer, or administrator shall be liable for  
11                         any payment amount established under a  
12                         Medicare set-aside for an item or service  
13                         provided to the claimant that is greater  
14                         than the payment amount for the item or  
15                         service established under the workers’ com-  
16                         pensation fee schedule (or in the absence  
17                         of such schedule, the medical reimburse-  
18                         ment rate) under the compensation law or  
19                         plan of the jurisdiction where the agree-  
20                         ment will be effective.

21                         “(ii) LIABILITY FOR PROVIDER  
22                         CHARGES GREATER THAN PAYMENT  
23                         UNDER WORKERS’ COMPENSATION AGREE-  
24                         MENT.—With respect to a workers’ com-  
25                         pensation settlement agreement, a provider

1 may not bill (or collect any amount from)  
2 the workers' compensation claimant, work-  
3 ers' compensation payer, employer, admin-  
4 istrator of the Medicare set-aside, legal  
5 representative of the claimant, payer, em-  
6 ployer, or administrator, or any other  
7 party related to the claimant, payer, em-  
8 ployer, or administrator an amount for  
9 items and services provided to the claimant  
10 that is greater than the payment rate for  
11 such items and services established under  
12 the Medicare set-aside of the agreement.  
13 No person is liable for payment of any  
14 amounts billed for an item or service in  
15 violation of the previous sentence. If a pro-  
16 vider willfully bills (or collects an amount)  
17 for such an item or service in violation of  
18 such sentence, the Secretary may apply  
19 sanctions against the provider in accord-  
20 ance with section 1842(j)(2) in the same  
21 manner as such section applies with re-  
22 spect to a physician. Paragraph (4) of sec-  
23 tion 1842(j) shall apply under this clause  
24 in the same manner as such paragraph ap-  
25 plies under such section.

1                 “(6) TREATMENT OF STATE WORKERS’ COM-  
2 PENSATION LAW.—For purposes of this subsection  
3 and subsection (p), if a workers’ compensation set-  
4 tlement agreement is accepted, reviewed, approved,  
5 or otherwise finalized in accordance with the work-  
6 ers’ compensation law of the jurisdiction in which  
7 such agreement will be effective, such acceptance, re-  
8 view, approval, or other finalization shall be deemed  
9 conclusive as to any and all matters within the juris-  
10 diction of the workers’ compensation law, including  
11 the determination of reasonableness of the settle-  
12 ment value; any allocations of settlement funds; the  
13 projection of future indemnity or medical benefits  
14 that may be payable under the State workers’ com-  
15 pensation law; and, in the case of a compromise  
16 agreement, the total amount that could have been  
17 payable for a claim which is the subject of such  
18 agreement in accordance with paragraph (2)(C)(ii).  
19 A determination made by applicable authority for a  
20 jurisdiction that a workers’ compensation settlement  
21 agreement is in accordance with the workers’ com-  
22 pensation law of the jurisdiction shall not be subject  
23 to review by the Secretary.”.

24                 (c) CONFORMING AMENDMENTS.—Subsection (b) of  
25 such section is further amended—

1                             (1) in paragraph (2)(B)(ii), by striking “A pri-  
2         mary plan” and inserting “Subject to subsections  
3         (p) and (q), a primary plan”;

4                             (2) in paragraph (2)(B)(iii)—

5                                 (A) in the first sentence, by striking “In  
6         order to recover payment” and inserting “Sub-  
7         ject to subsection (q), in order to recover pay-  
8         ment”; and

9                                 (B) in the third sentence, by striking “In  
10         addition” and inserting “Subject to subsection  
11         (q), in addition”; and

12                             (3) in paragraph (3)(A), by striking “There is  
13         established a private cause of action” and inserting  
14         “Subject to subsection (q), there is established a pri-  
15         vate cause of action”.

16                             (d) MODERNIZING TERMINOLOGY FOR PURPOSES OF  
17         MEDICARE SECONDARY PAYER PROVISIONS.—Subsection  
18         (b)(2)(A) of such section is amended by striking “work-  
19         men’s compensation law or plan” and inserting “workers’  
20         compensation law or plan” each place it appears.

21     **SEC. 3. LIMITATION ON LIABILITY.**

22                             The parties to a workers’ compensation settlement  
23         agreement which met the provisions of section 1862(b) of  
24         the Social Security Act (42 U.S.C. 1395y(b)) on the effec-  
25         tive date of settlement shall be accepted as meeting the

1 requirements of such section notwithstanding changes in  
2 law, regulations, or administrative interpretation of such  
3 provisions after the effective date of such settlement.  
4 Nothing in section 1862(b) of the Social Security Act (42  
5 U.S.C. 1395y(b)) shall authorize the Secretary of Health  
6 and Human Services to impose liability that is additional  
7 to the liability in effect on the date of the enactment of  
8 this Act with respect to a workers' compensation settle-  
9 ment agreement the effective date of which is before such  
10 date of enactment, except in the case of fraud.

**11 SEC. 4. EFFECTIVE DATE.**

12 The amendments made by this Act shall apply to a  
13 workers' compensation settlement agreement with an ef-  
14 fective date on or after the date of the enactment of this  
15 Act.

